

## **Offense for minor's possession of aerosol paint; seller's responsibilities**

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SB 707 by Rosson, et al. (Serna)

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- DIGEST:** SB 707 would have made it a Class C misdemeanor for a person younger than 18 years old to knowingly or intentionally possess aerosol paint. It would have been an affirmative defense to prosecution that the paint was possessed under the direct supervision of an adult. A business selling aerosol paints would have had to display the paints in the line of sight of the cashier or a normally occupied workstation, in a place that required the assistance of a store employee to reach, or in an electronically protected or monitored area. The bill would have established guidelines for penalties against businesses who violate the requirements.
- GOVERNOR'S REASON FOR VETO:** "Senate Bill 707, in its attempt to address the specific problem of 'gang graffiti,' imposes overly broad restrictions upon parents and guardians, and subjects law-abiding juveniles to prosecution. In addition, if this bill becomes law, retail businesses will be forced to hire additional employees, purchase security equipment and remodel their businesses to avoid prosecution under this bill."
- RESPONSE:** Sen. Peggy Rosson, the author of SB 707, said: "I am frankly quite surprised by the veto. Not only did the bill have the support of law enforcement, retailers, the paint industry, and anti-graffiti activists, but it appeared to be very consistent with the governor's own agenda. This includes stricter consequences for criminal acts by juveniles and increased protection of property rights. Senate Bill 707 gave law enforcement the tools they need for enforcement against graffiti artists. I also believe that property owners have an inherent right to protection of their property, and Senate Bill 707 would have given some relief to the unfortunate and unnecessary expenses that private property owners and governmental entities must spend for clean up and prevention of graffiti."
- Rep. Gilbert Serna, the House sponsor of SB 707, said: "I have had the good intentions of the community, the paint industry, and the support of the people across Texas on this bill. I strongly and respectfully disagree with the governor's veto of this bill. The bill was inspired by 18,000 petition signatures demanding a crackdown on juveniles who possess aerosol paint. The governor's veto seems most inconsistent in view of his campaign support of property rights which this bill directly addressed

in the protection of property from the damage and costs inherent in the widespread graffiti practiced by juveniles across the State of Texas.

"I have also had the public health of the State of Texas in making it more difficult for youngsters to obtain aerosol paint which is commonly used as an inhalant by teenagers thus resulting in brain and neurofunctional damage."

Rep. Glenn Lewis, the author of HB 2115, the House companion bill, said: "I strongly and respectfully disagree with Governor Bush's veto of Senate bill 707. Senate Bill 707 exemplified a bipartisan, broad-based collaborative effort which was supported by a diverse consensus of legislators, industry representatives and law enforcement agencies. This veto seems inconsistent with the concerns expressed in Governor Bush's stated legislative agenda. Senate Bill 707 was a significant measure in effectively curtailing the problems of inhalant abuse and acts of graffiti vandalism among our youth. This act would have strengthened the protection of citizen's property rights and enhanced public health interests.

"The objections to Senate Bill 707 were that it placed an undue burden on citizens and businesses; consequently, these objections are unsubstantiated. Senate Bill 707 was an attempt at severing the link between juvenile delinquency and property crime in Texas. Major urban areas are not the only areas affected by problems arising from "gang graffiti", it goes beyond their boundaries affecting the contiguous rural areas as well. Senate Bill 707 as a state law would create a uniform requirement which would allow major cities to avoid the cost and effort of enacting their own respective ordinances. Therefore, the belief that this (adverse) type of activity cannot occur in rural communities is incorrect. Senate Bill 707 sought to enhance the method of dealing with offenders only, increasing the accountability of parents and guardians and protecting law-abiding citizens from the unwanted and costly effects of property damage.

"Senate Bill 707 was supported by the retail association(s) and paint industry, who provided significant input in the drafting legislation which would be less restrictive to their business interests; consequently, this objection is unsubstantiated. Retail establishments would not be required

to undergo costly remodeling or significantly invest in additional staff or expensive surveillance equipment. These were just several options proposed to assist retailers. In most instances, retailers would only have needed to relocate aerosol product displays to comply with the law. Senate Bill 707 sought to provide consistency regarding the sale of aerosol products without placing an unreasonable economic burden on business selling the products in question.

"Governor's Bush's veto raised the objection of the undue burden of more restrictive laws on certain groups, but such broad-based collaborative measures as Senate Bill 707 must be considered in the absence of any other viable alternatives."

**NOTES:**

SB 2115, the companion bill to SB 707, was analyzed in Part Five of the May 9 *Daily Floor Report*.